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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT TACOMA

11 LENIER AYERS,

12 Plaintiff,

13  
14 v.

15 HENRI RICHARDS, *et al.*,

16 Defendants.

Case No. C08-5541 RJB/KLS

ORDER TO SHOW CAUSE

17 This civil rights action has been referred to Magistrate Judge Karen L. Strombom pursuant  
18 to 28 U.S.C. § 636(b)(1), Local MJR 3 and 4, and Federal Rule of Civil Procedure 72. Plaintiff was  
19 granted leave to proceed *in forma pauperis*. Dkt. # 3.

20 Presently before the Court for review is Plaintiff's petition for writ of mandamus seeking  
21 relief under 28 U.S.C. § 1361. Dkt. # 4<sup>1</sup>. Plaintiff requests that the Court order the removal of an  
22 employee of the Special Commitment Center (SCC). *Id.*  
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25 <sup>1</sup>Plaintiff subsequently filed a second "petition," and various affidavits and attachments  
26 which vary somewhat from his original filing. These have been collectively docketed as  
27 "Supplements to Petition for Writ of Mandamus." Dkt. # 5. Plaintiff is directed to cease further  
28 filings in this matter until he has provided the Court with a response to this Order.

1 A complaint is frivolous when it has no arguable basis in law or fact. *Franklin v. Murphy*,  
2 745 F.2d 1221, 1228 (9<sup>th</sup> Cir. 1984). The federal mandamus statute provides that “[t]he district  
3 courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer  
4 or employee of the United States or an agency thereof to perform a duty owed to the plaintiff.” 28  
5 U.S.C. § 1361. Mandamus is an extraordinary remedy. *Barron v. Reich*, 13 F.3d 1370, 1374 (9<sup>th</sup>  
6 Cir. 1994). A writ of mandamus is appropriately used only when (1) the petitioner’s claim is “clear  
7 and certain”; (2) the respondent official’s duty to act is ministerial and (3) no other adequate  
8 remedy is available. *Id.* (citing *Fallini v. Hodel*, 783 F.2d 1343, 1345 (9<sup>th</sup> Cir. 1986)).

9 Plaintiff relies on *Shea v. Edward*, 581 N.E.2d 822 (1991), an Illinois state case that  
10 involves the Illinois state practice of allowing prisoners to petition for a writ of mandamus  
11 commanding prison officials to retry a disciplinary charge where the prisoner did not receive due  
12 process. *Id.*; *See also, McAtee v. Cowan*, 250 F.3d 506 (7<sup>th</sup> Cir. 2001) (power of Illinois courts to  
13 review prisoner disciplinary proceedings to resolve good time credits for violation of both federal  
14 and state law is well-established). These authorities are neither persuasive nor relevant to the  
15 petition filed by Plaintiff here.

16 In this case, Mr. Ayers filed a petition for a writ of mandamus, seeking to compel the court  
17 to issue an order directing the superintendent of the SCC to relocate an employee, whom Mr. Ayers  
18 claims is abusing him. Dkt. # 4, p. 1. The extraordinary remedy of mandamus is not appropriate to  
19 compel the type of relief sought by Mr. Ayers in this lawsuit. The district court does not have  
20 jurisdiction to issue a writ of mandamus to state officers. *Demos v. United States Dist. Court for E.*  
21 *Dist. Of Wash.*, 925 F.2d 1160, 1161 (9<sup>th</sup> Cir. 1991).

22 To state a claim under 42 U.S.C. § 1983, a complaint must allege that the conduct com-  
23 plained of was committed by a person acting under color of state law and that the conduct deprived  
24 a person of a right, privilege, or immunity secured by the Constitution or laws of the United States.  
25 *Parratt v. Taylor*, 451 U.S. 527, 535 (1981), *overruled on other grounds, Daniels v. Williams*, 474  
26 U.S. 327 (1986). Section 1983 is the appropriate avenue to remedy an alleged wrong only if both of  
27 these elements are present. *Haygood v. Younger*, 769 F.2d 1350, 1354 (9<sup>th</sup> Cir. 1985), *cert. denied*,

1 478 U.S. 1020 (1986).

2 Although complaints are to be liberally construed in a plaintiff's favor, conclusory  
3 allegations of the law, unsupported conclusions, and unwarranted inferences need not be accepted  
4 as true. *Id.* While the court can liberally construe plaintiff's complaint, it cannot supply an essential  
5 fact an inmate has failed to plead. *Pena*, 976 F.2d at 471 (*quoting Ivey v. Board of Regents of Univ.*  
6 *of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982)).

7 Due to the deficiencies described above, the court will not serve the complaint. Plaintiff  
8 shall file an amended complaint curing, if possible, the above noted deficiencies, or show cause  
9 explaining why this matter should not be dismissed **no later than December 5, 2008**. Plaintiff's  
10 amended complaint shall consist of a **short and plain statement** showing that he is entitled to  
11 relief. Plaintiff shall allege with specificity the following:

- 12 (1) the names of the persons who caused or personally participated in causing the  
alleged deprivation of his constitutional rights;
- 13 (2) The dates on which the conduct of each Defendant allegedly took place; and
- 14 (3) the specific conduct or action Plaintiff alleges is unconstitutional.

15 Plaintiff shall set forth his factual allegations in separately numbered paragraphs and shall  
16 attach only those exhibits relevant to the factual allegations contained within the amended  
17 complaint.

18 Plaintiff is further advised that this amended pleading will operate as a complete substitute  
19 for (rather than a mere supplement to) the present complaint. Plaintiff shall present his complaint  
20 on the form provided by the Court. The amended complaint must be legibly rewritten or retyped in  
21 its entirety, it should be an original and not a copy, it may not incorporate any part of the original  
22 complaint by reference, and **it must be clearly labeled the "First Amended Complaint" and**  
23 **Cause Number C08-5541RJB/KLS must be written in the caption.** Additionally, Plaintiff must  
24 submit a copy of the "First Amended Complaint" for service on each named Defendant.

25 The Clerk is directed to send Plaintiff the appropriate forms that he may file an amended  
26 complaint. The Clerk is further directed to send a copy of this Order and a copy of the General  
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1 Order to Plaintiff.

2 **Plaintiff is cautioned that if he fails to amend his complaint by December 5, 2008, the**  
3 **Court will dismiss the complaint for failure to state a claim.**

4 Dated this 12th day of October, 2008.

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7 Karen L. Strombom  
8 United States Magistrate Judge  
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